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**Bricklayers and Allied Craftworkers, Local #5-New Jersey; Bricklayers and Allied Craftworkers, Local #2-New Jersey; and International Union of Bricklayers and Allied Craftworkers and Jersey Panel Corporation and Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No. 8, AFL-CIO**

**Bricklayers and Allied Craftworkers, Local #2-New Jersey and Jersey Panel Corporation and Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No. 8, AFL-CIO.** Cases 4-CD-1021, 4-CD-1025-1, 4-CD-1025-2, 4-CD-1026-1, and 4-CD-1026-2

December 20, 2001

**DECISION AND DETERMINATION OF DISPUTES**

**BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH**

This is a consolidated<sup>1</sup> proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges in Case 4-CD-1021 on April 17, 2000,<sup>2</sup> by Jersey Panel Company (the Employer or Jersey Panel); in Cases 4-CD-1025-1 and 4-CD-1025-2 on May 12 by the Employer; and in Cases 4-CD-1026-1 and 4-CD-1026-2 on May 16 by the Employer. It is alleged in Cases 4-CD-1021, 4-CD-1025-1, 4-CD-1025-2, and 4-CD-1026-1 that the International Union of Bricklayers and Allied Craftworkers (BAC)<sup>3</sup> violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by BAC rather than to employees represented by the Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No. 8, AFL-CIO (the Plasterers).

It is alleged in Case 4-CD-1026-2 that the Plasterers violated Section 8(b)(4)(D) by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees repre-

sented by the Plasterers rather than to employees represented by BAC.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>4</sup>

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.<sup>5</sup>

**I. JURISDICTION**

The parties stipulate, and we find, that the Employer, a New Jersey corporation, with its principal office in Vineland, New Jersey, is engaged in the provision of exterior contracting work for commercial and residential customers. During the past 12-month period, the Employer's gross revenues have exceeded \$500,000 and during the same period, the Employer has purchased goods and services valued in excess of \$50,000 directly from points outside the State of New Jersey. We accordingly find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, based on the stipulation of the parties, that BAC Local 2, BAC Local 5, the International Union of Bricklayers and Allied Craftworkers, and the Plasterers are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTES**

*A. Background and Facts of Disputes*

The Employer performs exterior plastering work, including prefabricated and field-constructed exterior wall assembly throughout southern New Jersey. Dominic Baruffi is the Employer's president, and Larry Baruffi is its vice president. The Employer employs a core group of approximately five to eight employees who are currently represented by the Plasterers. These employees have received in-house plastering training as well as periodic training by the manufacturers of plastering products.

Since the mid-1980s, the Employer has been a party to 8(f) agreements with both BAC Local 5 and the Plasterers. Until 1999, the Employer's core employees were represented by BAC Local 5. After the core employees signed authorization cards to be represented by the Plasterers, the Employer entered into a collective-bargaining agreement with the Plasterers on January 12, 2000.<sup>6</sup>

<sup>1</sup> An order consolidating cases and notice of hearing was issued on June 6, 2000.

<sup>2</sup> All dates refer to 2000 unless otherwise indicated.

<sup>3</sup> The Respondent Union in Case 4-CD-1021 is International Union of Bricklayers and Allied Craftworkers Local #5-New Jersey (BAC Local 5); the Respondent Union in Case 4-CD-1025-1 is the International Union of Bricklayers and Allied Craftworkers; the Respondent Union in Case 4-CD-1025-2 is International Union of Bricklayers and Allied Craftworkers, Local #2-New Jersey (BAC Local 2); and the Respondent Union in Case 4-CD-1026-1 is International Union of Bricklayers and Allied Craftworkers, Local #2-New Jersey (BAC Local 2).

<sup>4</sup> Member Walsh did not participate in the decision on the merits.

<sup>5</sup> The hearing officer inadvertently omitted the Plasterers in the issue statement portion of her report. As stated above, the Plasterers are the Respondent in Case 4-CD-1026-2.

The Employer's unopposed motion to correct an error in the transcript is granted.

<sup>6</sup> As discussed below, BAC essentially contends, and in fact alleged in an unfair labor practice charge, that the Employer unlawfully failed and refused to bargain with BAC because, notwithstanding an automatic renewal provision in the Employer's expired agreement with BAC Local 5, the Employer recognized the Plasterers as the exclusive bargaining representative for the unit employees. The Regional Director refused to issue a complaint on this charge, stating that, although the

1. Cases 4-CD-1021, 4-CD-1025-1, and  
4-CD-1025-2

Before beginning work on the projects that are in dispute, the Employer worked on a job in Somers Point, New Jersey. That project involved work that is similar to the work in dispute. Dominic Baruffi testified to the following events. In mid-February, BAC Local 5 Business Agent Rich Tolson asked Dominic Baruffi about the Somers Point job. Baruffi told Tolson he would be using his own employees for this job. According to Baruffi, Tolson stated that the Employer should use BAC Local 5 employees on the job. Baruffi refused this request. Tolson then stated, "[W]ell[,] you're going to have a problem."

The Employer began working on an exterior insulation and finishing system (EIFS) job at the Sands Hotel and Casino in Atlantic City, New Jersey, in April. The Employer employed a range of 5 to 15 employees, including 5 to 8 core employees to work on the project. The additional employees were referred by the Plasterers. On April 17, at the direction of BAC Local 5 Business Agent Tolson, BAC Local 5 set up a picket line at the jobsite. The picket line was taken down later that day after the general contractor for the project agreed to keep the Employer off the job until the dispute was resolved. That Friday, the general contractor told Dominic Baruffi that it was going to complete the job using its own employees. Following a telephone call to BAC Vice President Dominic Spano, Baruffi secured Spano's agreement not to picket. On April 21, Jersey Panel's employees returned to work at the Sands jobsite.

On April 27, Baruffi met with Spano and BAC representative, Anthony LaTorre, regarding the dispute. Baruffi told Spano and LaTorre that he intended to use his core employees on every job, but that he was willing to call BAC members if he needed additional workers. Spano asked if BAC could get dues from the Employer's core employees. Baruffi replied that he did not know, but would look into the matter. Baruffi subsequently told Spano that he had been advised that he could not do this.

On May 1, BAC Local 5 transferred the membership of all of its plasterer members to BAC Local 2.

On May 3, Baruffi met with Spano and LaTorre. Baruffi testified that the following occurred. Spano told him that if BAC could not get the core employees back as BAC members, then he wanted "it all," i.e., he wanted Baruffi to use BAC members rather than his core employees. Baruffi stated that he would use BAC members only after using his core employees. Spano stated that that was not good enough, and that if he did not get it all,

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Employer's 8(f) obligation to BAC Local 5 continued under the agreement's automatic renewal provision, BAC Local 5 subsequently effectively disclaimed interest in representing the Employer's employees when BAC transferred Local 5's jurisdiction to the newly chartered BAC Local 2. We have been administratively advised that BAC's appeal of the Region's dismissal of the charge is pending.

Baruffi was going to have problems and there would be a picket line.<sup>7</sup> (Baruffi also testified that Spano told him that he did not care what happened to Baruffi's employees.) The following Monday, BAC Local 2 set up a picket line at the Sands Hotel and Casino site. By then, the work was nearly completed.

2. Cases 4-CD-1026-1 and 4-CD-1026-2

The Employer was scheduled to begin EIFS work at the Hilton Resort garage in Atlantic City, New Jersey, in mid-May.<sup>8</sup> Around that time, Baruffi spoke with William Taylor, a business representative for the Plasterers. Taylor told Baruffi that he was contractually required to use Plasterers on the job, and that the Plasterers would picket the site if the Employer failed to use Plasterers.

The Employer was unable to start the job because the general contractor told Baruffi that the owner did not want picket lines on the job. At some point thereafter, Baruffi asked LaTorre if Spano would picket the site. According to Baruffi, LaTorre stated, "Dominic, he's going to picket you on the Hilton [and] he's going to picket you everywhere you go." Pursuant to a consent agreement, BAC agreed not to picket the job, and Jersey Panel has worked on the job with its core employees.

*B. Work in Dispute*

The work in dispute involves the exterior plastering and installation, and the installation of an exterior finishing system, at the Sands Hotel and Casino, Indiana and Pacific Avenues, Atlantic City, New Jersey, and at the Atlantic City Hilton Resort garage on Pacific Avenue, Atlantic City, New Jersey.

*C. Contentions of the Parties*

The Employer contends that there is reasonable cause to believe that, with respect to Cases 4-CD-1021, 4-CD-1025-1, and 4-CD-1025-2, BAC violated Section 8(b)(4)(D) and, therefore, the Board must make a determination of the merits of the disputes. The Employer further contends that, with respect to Cases 4-CD-1026-1 and 4-CD-1026-2, there is reasonable cause to believe that BAC and the Plasterers, respectively, violated Section 8(b)(4)(D) and, therefore, the Board must make a determination of the merits of the disputes.

The Employer contends that the disputed work in each case should be awarded to employees represented by the

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<sup>7</sup> Spano broadly denied that he made various remarks at these meetings which were attributed to him by Baruffi. While the Board does not make credibility findings in a 10(k) proceeding, "[a] conflict in testimony does not prevent the Board from proceeding with a determination of the dispute under Section 10(k)." *Laborers Local 334 (C. H. Heist Co.)*, 175 NLRB 608, 609 (1969). In this regard, "[t]he Board is not charged with finding that a [8(b)(4)(D) violation] did in fact occur, but only that reasonable cause exists for finding such a violation." *Id.*

<sup>8</sup> The charges relating to this project refer to the worksite as Bally's Hotel and Casino. Also, the Plasterers' brief refers to the project as the Bally's project. However, it is undisputed that the project involved the Hilton Resort garage, and that references to Bally's and Hilton are to the same project, i.e., the work in dispute.

Plasterers based on the factors of collective-bargaining agreements, employer preference and past practice, relative skills, economy and efficiency of operations, and loss of employment. The Employer further contends that the Board should issue a broad order applicable to the Employer's further work in southern New Jersey.

The Plasterers contends that there is reasonable cause to believe that BAC have violated Section 8(b)(4)(D). The Plasterers further contends that the Employer has made proper assignments of the disputed work to employees represented by the Plasterers, and that the factors of collective-bargaining agreements, employer preference and past practice, relative skills, economy and efficiency of operations, and job loss favor an award of the disputed work to employees represented by the Plasterers. The Plasterers also contends that the Board should issue a broad order.

BAC contends that the notice of hearing should be quashed, alleging that these cases involve a representational dispute over who should represent the core group of the Employer's employees, not a jurisdictional dispute. BAC further contends that its picketing addressed alleged unfair labor practices (the Employer's alleged failure to sign a new 8(f) agreement, among other things), not a jurisdictional dispute. BAC alternatively contends that, if the Board finds the statute applicable and determines the disputes, the work should be awarded to employees represented by BAC based on the factors of relative skills and past practice.

#### *D. Applicability of the Statute*

Before the Board may proceed with a determination of the disputes pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. This requires a finding that there are competing claims to disputed work between rival groups of employees and that there is reasonable cause to believe that a party has used proscribed means to enforce its claim. "This reasonable cause standard is substantially lower than that required to establish that the statute has in fact been violated. In addition, the Board's Section 10(k) procedure, unlike the unfair labor practice procedure, does not call for assessments of the credibility of witnesses." *Plumbers Local 562 (Charles E. Jarrell Contracting)*, 329 NLRB 529, 531 (1999), quoting *Plumbers Local 562 (C & R Heating & Service Co.)*, 328 NLRB 1235 (1999).

The parties stipulated that BAC Locals 5 and 2 and the Plasterers all claim the work in dispute at the Sands Hotel and Casino as defined in the notice of hearing. The parties also stipulated that BAC Local 2 and the Plasterers both claim the work in dispute at the Atlantic City Hilton Resort garage as defined in the notice of hearing. Accordingly, we find that BAC and the Plasterers both claim the disputed work.

The Board must also find that no method for voluntary adjustment of the dispute has been agreed on. Although the parties did not stipulate that there is no agreed-on method for a voluntary adjustment of the disputes, there was no evidence presented that such a method exists. Accordingly, we find that no method for voluntary adjustment of the disputes has been agreed on.

We now turn to the issue of whether there is reasonable cause to believe that a party has used proscribed means to enforce its claim to disputed work.

As stated above, before beginning work on the projects that are in dispute, the Employer worked on a job in Somers Point, New Jersey. According to Dominic Baruffi, Tolson stated that Baruffi would "have a problem" if he did not use BAC Local 5 employees on that job.

In April, the Employer began EIFS work at the Sands Hotel and Casino, and employed 5 to 15 employees, including 5 to 8 core employees on this job. (The additional employees were referred by the Plasterers.) On April 17, at Tolson's direction, BAC Local 5 set up a picket line at the jobsite. The picket line was taken down later that day, and, on April 21, the Employer's employees returned to work at the jobsite.

On April 27, Baruffi met with BAC Vice President Spano, and Anthony LaTorre (another BAC official) to try to resolve the dispute. At this meeting, Baruffi told Spano and LaTorre that he intended to use his core employees on every job, but that he was willing to use BAC members if he needed additional workers. Spano asked if BAC could get dues from the core employees; Baruffi stated that he would look into it. (Baruffi testified that his counsel advised him that he could not get the core employees to pay dues to BAC.) On May 1, BAC Local 5 transferred the membership of all its plasterer members to BAC Local 2.<sup>9</sup>

Baruffi, Spano, and LaTorre met again on May 3. At this meeting, according to Baruffi, Spano told him that if BAC could not get the core employees back as BAC members then he wanted "it all," i.e., he wanted Baruffi to use BAC members rather than the core employees. Baruffi told Spano that he would only use BAC members if he needed additional workers on a job. Spano told Baruffi that this was not good enough. Spano also stated that if he did not get "it all," Baruffi was going to have problems, and that BAC would put up a picket line. Finally, Spano stated that he did not care what happened to Baruffi's employees. The following Monday, BAC Local 2 set up a picket line at the Sands Hotel and Casino jobsite.

The Employer was to begin EIFS work at the Hilton Resort garage in Atlantic City in mid-May. Around that time, Baruffi spoke with William Taylor, a business representative for the Plasterers. Taylor told Baruffi that Baruffi was contractually required to use Plasterers em-

<sup>9</sup> See fn. 6, supra.

employees on the job, and that the Plasterers would picket the site if the Employer failed to do so.

The Employer was unable to start this job on schedule because the general contractor told Baruffi that the owner did not want picket lines on the job. Baruffi telephoned LaTorre and asked if Spano would picket the site. LaTorre replied, "Dominic, he's going to picket you on the Hilton. And he's going to picket you everywhere you go." Eventually, through a consent agreement, BAC agreed not to picket the job, and the Employer has been able to continue working on the job with its core employees.

BAC denies making the various above-mentioned statements attributed to its officials. As stated above, BAC contends that the instant cases involve a representational dispute (i.e., which union should represent the Employer's employees), not a jurisdictional dispute. BAC further contends that the object of their picketing was to address the Employer's alleged unfair labor practices.

With respect to Case 4-CD-1026-2, which involves the disputed work at the Hilton Resort garage, we find reasonable cause to believe that the Plasterers violated Section 8(b)(4)(D), as demonstrated by Taylor's threat to picket if the work was not assigned to employees represented by the Plasterers. Also, with respect to Case 4-CD-1026-1, which also involves the disputed work at the Hilton Resort garage, we find reasonable cause to believe that BAC violated Section 8(b)(4)(D), as demonstrated by LaTorre's statement to Baruffi that Spano would picket the Employer on the Hilton project.

We also find reasonable cause to believe that, in Cases 4-CD-1021, 4-CD-1025-1, 4-CD-1025-2, BAC violated Section 8(b)(4)(D) with respect to the disputed work at the Sands Hotel and Casino.

Concededly, Spano's statement at the April 27 meeting discussed above is consistent with BAC's contention that these cases actually involve a representational dispute. Spano asked Baruffi whether he could get Baruffi's core employees to pay dues to BAC. This does not reflect a jurisdictional objective. On May 3, Spano told Baruffi that if BAC could not get the core employees back as BAC members, then he wanted "it all." These comments certainly reflect a primary representational objective (i.e., he wanted the core employees back as members). But, they go further and also reveal a jurisdictional object, should the representational goal fail. Namely, these comments can reasonably be interpreted to mean that Spano wanted Baruffi to use BAC members rather than his core employees. Further evidence of this is that Spano also told Baruffi that he did not care what happened to Baruffi's core employees. And, Spano further told Baruffi that if he did not get "it all," Baruffi was going to have problems and there would be a picket line. The following Monday, BAC Local 2 set up a picket line at the Sands Hotel and Casino worksite.

Contrary to BAC's contentions, then, these May 3 comments demonstrate that there is reasonable cause to believe that a purpose behind the earlier BAC Local 5 picketing at the Sands Hotel and Casino worksite and the subsequent picketing and threatened picketing at that worksite (and the threatened picketing at the Hilton Resort garage), was to compel the Employer to reassign the disputed work to employees represented by BAC, including, if necessary, replacing the Employer's core employees. Even if BAC hoped to get the core employees to switch back to BAC (or at least pay dues to the BAC), Spano's May 3 comments support the reasonable inference that if BAC did not achieve that goal, *an* object of its picketing and threats to picket was jurisdictional.

Although BAC contends that its picketing was designed to inform the public about unfair labor practice charges it filed against the Employer, we find, under the circumstances, that reasonable cause exists to believe that *an* object of the picketing (as well as the threats to picket) was to force or require the Employer to reassign the disputed work from employees represented by the Plasterers to employees represented by BAC. Specifically, as discussed above, Spano's above-mentioned remarks to Baruffi demonstrate that BAC was motivated to picket (and threaten to picket), at least in part to compel the Employer to reassign the work to employees represented by BAC, and that this included, if necessary, replacing the core employees with BAC members. Because "[o]ne proscribed object is sufficient to bring a union's conduct within the ambit of Section 8(b)(4)(D)," we find reasonable cause to believe that a violation of the statute has occurred. *Plumbers Local 305 (Abington Constructors)*, 307 NLRB 1048, 1049 (1992).

Accordingly, for these reasons, and without any requirement to resolve conflicts in the testimony,<sup>10</sup> we find that the disputes are properly before the Board for determination.

#### *E. Merits of the Disputes*<sup>11</sup>

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of these disputes.

<sup>10</sup> See *Operating Engineers Local 12 (Winegardner Masonry)*, 331 NLRB No. 189, slip op. at 3 (2000), and cases cited therein at fnns. 4 and 5.

<sup>11</sup> The following discussion refers to the merits of the disputes in all of the consolidated cases.

### 1. Certifications and collective-bargaining agreements

Neither BAC nor the Plasterers has been certified by the Board as the collective-bargaining representative of the employees performing the disputed work. Accordingly, this factor is not helpful in determining the disputes.

As noted above, the Employer has a collective-bargaining agreement with the Plasterers. The agreement is effective from December 1, 1999, through December 1, 2004. This agreement states, *inter alia*, that it “shall apply to all *field plastering* work performed by Jersey Panel in field operations.” (Emphasis in original.) The agreement further states, *inter alia*, that work jurisdiction includes:

[T]he unloading, stock piling, general distribution and erection, the carrying, handling and transportation associated with scaffolding, mud sills, plasterer materials, masking and protections, spray fireproofing, ornamental plaster, prepare and mix all materials used on job, plaster pump operation, insulation in conjunction with EIFS, taping and finishing of drywall and gypsum board including but not limited to veneer plaster systems, and any other aides to the plasterer such as substrate reinforcement for plaster systems including nylon, polymer, wire meshes and pertinent screeds and stops of similar materials integral to the plaster systems.

As stated above, BAC alleged in an unfair labor practice charge that, even though BAC Local 5’s collective-bargaining agreement with the Employer expired on October 31, 1999, this agreement renewed itself pursuant to an automatic renewal clause. The Regional Director refused to issue a complaint on this charge (Case 4–CA–28941), and we have been administratively advised that BAC’s appeal is pending.<sup>12</sup> Essentially, the Regional Director reasoned that, because BAC International (the Union) transferred jurisdiction over plastering and cement masons’ work in southern New Jersey from BAC Local 5 to BAC Local 2 on April 24, this constituted a constructive disclaimer of BAC Local 5’s interest in representing employees formerly under its jurisdiction. The Regional Director’s refusal to issue a complaint on this charge does not, of course, constitute a binding *adjudication* of this matter.<sup>13</sup> Thus, since BAC Local 5 continues to claim the work in dispute at the Sands Hotel and Casino and asserts that its agreement with the Employer automatically renewed, *we will assume arguendo for purposes relating to this 10(k) determination only*,<sup>14</sup> that

<sup>12</sup> See fn. 6, *supra*.

<sup>13</sup> See, e.g., *NLRB v. Food & Commercial Workers Local 23*, 484 U.S. 112, 124 (1987); *Sheet Metal Workers Local 28 (American Elgen)*, 306 NLRB 981, 982 (1992); *Machinists Local Lodge 790*, 150 NLRB 565, 571 (1964).

<sup>14</sup> The purpose of a 10(k) proceeding is not to litigate the merits of an unfair labor practice.

BAC Local 5’s agreement with the Employer is applicable to the disputed work at the Sands Hotel and Casino.<sup>15</sup>

This agreement states, in article 3 (“Scope of Work”), that it includes all “EIF systems and related work.”

In view of the quoted provisions of its collective-bargaining agreement with the Employer, we find that the Plasterers current collective-bargaining agreement arguably covers the disputed work at both the Sands Hotel and Casino and the Hilton Resort garage sites. In view of the quoted provision of its purported collective-bargaining agreement with the Employer, we find that BAC Local 5’s collective-bargaining agreement with the Employer arguably covers the disputed work at the Sands Hotel and Casino and the Hilton Resort garage sites. Because both the Plasterers’ and BAC Local 5’s collective-bargaining agreements reasonably can be read as covering the work in dispute at the Sands Hotel and Casino and the Hilton Resort garage sites, we find that the factor of collective-bargaining agreements does not favor awarding the work in dispute to either group of employees.

### 2. Employer preference and past practice

The Employer stated a preference for having the disputed work at the Sands Hotel and Casino and the Hilton Resort garage assigned to its own employees, i.e., its core employees who are currently represented by the Plasterers. Therefore, employer preference favors the assignment of the disputed work in each case to employees represented by the Plasterers.

The record reflects that the Employer’s past practice has been to use its core employees (sometimes supplemented by additional employees who are represented by the Plasterers or BAC) to perform work that is similar to the disputed work. The Employer’s core employees were represented by BAC from the mid-1980s until December 1999. They became represented by the Plasterers in December 1999. The events herein occurred in April and May 2000. In light of this large time differential, the factor of employer past practice favors awarding the work in dispute to employees represented by BAC.

### 3. Area and industry practice

BAC presented evidence that BAC-represented employees have performed work similar to the disputed work in southern New Jersey (including Atlantic County, the county in which the disputed work is located). The Plasterers presented evidence that employees represented by the Plasterers have performed work similar to the disputed work in southern New Jersey (including Atlantic County). Baruffi, the Employer’s president, testified that employees represented by BAC have performed work similar to the disputed work in southern New Jersey (in-

<sup>15</sup> We also assume *arguendo*, for purposes of this proceeding only, that the agreement applies to BAC Local 2’s claim to perform the disputed work at the Sands Hotel and Casino and the Hilton Resort garage jobsites.

cluding Atlantic County). Accordingly, we find that this factor does not favor awarding the disputed work to either group of employees.

#### 4. Relative skills

Baruffi testified that EIFS work involves the application of layers of materials that create an insulation barrier on the exterior of a building, and the application of a finished coating. The work involves, *inter alia*, the utilization of a hawk and a trowel.

Baruffi testified that his employees periodically receive in-house training and are periodically trained by manufacturers. The record shows that the vast majority of Plasterers-represented employees have been trained in the application and installation of EIFS products. The record also shows that BAC conducts training programs through the International Masonry Institute relating to plastering skills, and that some BAC-represented employees have received training relating to EIFS work. Accordingly, we find that this factor does not favor awarding the disputed work to either group of employees.

#### 5. Economy and efficiency of operations

The Employer argues that it would be more economical and efficient for it to assign the disputed work to its employees.

In this regard, Baruffi testified without contradiction that he prefers to use his own employees because of, *inter alia*, “efficiency in making the numbers work . . . [that is,] the ability to do a job cost effectively, to make it work, to have guys that know what they’re doing to produce the project.”

He further testified about what he perceived to be inefficiencies associated with the work of supplemental employees represented by BAC who had worked for the Employer. In response to a question about additional supervision allegedly required for certain supplemental employees represented by BAC, Baruffi testified:

You could train them yourself. You could try to, it slows you down. And so what you’re doing is you’re actually showing them in detail . . . what you’re doing. So, you know, I don’t think, I would never question the integrity that I know of, of any of these individuals. So I mean, they were full bodied individuals to work. But if someone doesn’t come to you knowing exactly what you’re doing, then what you’re doing is your pace is brought down. And you have to spend more time with them making sure, and checking with them that the details are complete and sufficient for quality and longevity.

Although the factor of economy and efficiency of operations is a close question, we find that since BAC did not present any relevant evidence or contentions, it favors

awarding the disputing work in each case to employees represented by the Plasterers.

#### 6. Interunion agreements

BAC contends that, pursuant to an interunion agreement between BAC and the Plasterers, BAC-represented employees were to perform all plastering work in all of southern New Jersey except for Camden, Gloucester, and Salem Counties. However, this agreement was not offered into evidence.

BAC further contends that a decision of the Governing Board of Presidents of the Building and Construction Trades Department of the AFL-CIO demonstrates that BAC and the Plasterers were required to adhere to certain geographical areas for purposes of performing plastering work. The hearing officer did not accept exhibits relating to this decision into evidence. Instead, the exhibits were placed in the rejected exhibits file. There is no evidence that the decision pertains to the disputed work. Further, there is no evidence that the Employer is bound by this decision.<sup>16</sup> Accordingly, this factor does not favor an award of the disputed work to either group of employees.

#### Conclusions

After considering all of the relevant factors, we conclude that employees represented by the Plasterers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by the Plasterers, not to that Union or its members.

#### Scope of the Award

The Employer and the Plasterers contend that, based on the actions of BAC, a broad order with respect to plastering work in various New Jersey Counties<sup>17</sup> is necessary to avoid similar jurisdictional disputes in the future. The Board has held that it will restrict the scope of its determination to a specific jobsite (or sites, as is the case here) unless there is evidence that similar disputes may occur in the future. See, e.g., *Operating Engineers Local 12 (Winegardner Masonry)*, 331 NLRB No. 189, slip op. at 5 (2000). There is no evidence that BAC has claimed similar work to be performed by the Employer in the future. Further, the evidence does not show that

<sup>16</sup> See *Plumbers Local 562 (Grossman Contracting)*, 329 NLRB 516, 525 (1999).

In light of our resolution of this factor, we find it unnecessary to address the Plasterers request to admit a subsequently issued decision of the Building and Construction Trades Department into evidence as after-acquired evidence.

<sup>17</sup> The Plasterers specifically request that the award cover all plastering work for the Employer in Atlantic, Cape May, Ocean, Burlington, and Cumberland Counties. The Employer requests that the award “cover the geographic region in which [the Employer] performs work” including Atlantic County.

BAC has a proclivity to engage in unlawful conduct to obtain work similar to the disputed work. Accordingly, the present determination is limited to the particular controversies that gave rise to this proceeding.

#### DETERMINATION OF DISPUTES

The National Labor Relations Board makes the following Determinations of Disputes.

1. Employees of Jersey Panel Corporation represented by Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No. 8, AFL-CIO are entitled to perform the exterior plastering and insulation, and the installation of an exterior finishing system at the Sands Hotel and Casino, Indiana and Pacific Avenues, Atlantic City, New Jersey, and at the Atlantic City Hilton Resort garage on Pacific Avenue, Atlantic City, New Jersey.

2. Bricklayers and Allied Craftworkers, Local #5-New Jersey, and Bricklayers and Allied Craftworkers Local #2-New Jersey and International Union of Bricklayers and Allied Craftworkers are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Jersey Panel Corporation to assign the disputed work at the Sands Hotel and Casino, Indiana and Pacific Avenues, Atlantic City, New Jersey, to employees represented by it. Bricklayers and Allied Craftworkers, Local #2-New Jersey and Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No. 8, AFL-CIO are not entitled by

means proscribed by Section 8(b)(4)(D) of the Act to force Jersey Panel Corporation to assign the disputed work at the Atlantic City Hilton Resort garage on Pacific Avenue, Atlantic City, New Jersey, to employees represented by them.

3. Within 14 days from this date, Bricklayers and Allied Craftworkers, Local #5-New Jersey; Bricklayers and Allied Craftworkers, Local #2-New Jersey; and International Union of Bricklayers and Allied Craftworkers, and Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No. 8, AFL-CIO, shall notify the Regional Director for Region 4 in writing whether they will refrain from forcing Jersey Panel Corporation, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. December 20, 2001

Peter J. Hurtgen,	Chairman
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Wilma B. Liebman,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD